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6 *Attorneys for Defendants*
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 7 *Bank of America, N.A., ReconTrust*
 8 *Company, N.A., and MERS*

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 CODY B. WEST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA HOME LOANS,
 15 BANK OF AMERICA, N.A., BAC HOME
 16 LOANS SERVICING, LP, RECONTRUST
 COMPANY, and MERS (MORTGAGE
 17 ELECTRONIC REGISTRATION SYSTEMS),

18 Defendant.

Case No.: 2:10-cv-01950-GMN-LRL

**MOTION TO STRIKE PLAINTIFF'S
 OPPOSITION TO DEFENDANTS'
 REPLY IN SUPPORT OF MOTION TO
 DISMISS AMENDED COMPLAINT**

19 Defendants BAC Home Loans Servicing, LP (also improperly sued as "Bank of America
 20 Home Loans") ("BAC"), Bank of America, N.A. ("BOA N.A."), ReconTrust Company, N.A.
 21 ("ReconTrust") (collectively "BOA Defendants"), and Mortgage Electronic Registration Systems
 22 ("MERS") (collectively "Defendants"), move to strike Plaintiff's Opposition to Defendants'
 23 Reply in Support of their Motion to Dismiss Plaintiff's Amended Complaint (the "Supplemental
 24 Opposition") [Dkt. 20].

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I.

MEMORANDUM OF POINTS AND AUTHORITIES**A. Background**

Defendants filed their Motion to Dismiss Plaintiff's Amended Complaint on December 3, 2010 [Dkt. 11], arguing that Plaintiff relies on a worthless, fraudulent instrument as the basis of his Complaint, and establishing that each of Plaintiff's causes of action fails: (1) to allege facts setting forth cognizable claims for relief; and/or (2) to comply with Fed. R. Civ. P. 9(b). On December 14, 2010, Plaintiff filed an Opposition.¹ Defendants filed a Reply in Support of their Motion to Dismiss on December 30, 2011.

Plaintiff now attempts to file an untimely and procedurally improper document that is substantively a supplemental "opposition." Plaintiff already filed an Opposition to Defendants' Motion to Dismiss. The rules of this Court do not allow Plaintiff to file another Opposition in order to bolster the substantive failings of his first Opposition and address the arguments contained in Defendants' Reply brief.

B. The Court Should Strike Plaintiff's Opposition as Improper and Untimely

LR 7-2 provides for the filing of an opposition to a motion within ten (10) days after service of the motion. The moving party may then file a reply memorandum of points of authorities. Here, Defendants file their Motion to Dismiss, which Plaintiff opposed. Defendants then filed a supporting Reply brief. Plaintiff already filed an opposition, and now attempts to file a second, supplemental opposition.

The Supplemental Opposition is improper and the Court should strike it without giving it any consideration.

C. Conclusion

Plaintiff's supplemental opposition seeks to address the substantive failings of the Opposition he filed on December 14, 2010. Pursuant to the rules of this Court, Plaintiff cannot

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¹ Plaintiff styled his Opposition "*Opposition to Motion to Dismiss Amended Complaint and Request for Dismissal of Motion.*"

1 file an Opposition to Defendant's Reply in Support of their Motion to Dismiss. The Court should
2 strike this improper document.

3 DATED this 21st day of January, 2011.

4 **AKERMAN SENTERFITT LLP**

5 /s/ Ariel Stern

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 21st day of January, 2011 and pursuant to Fed. R. Civ. P. 5(b), I served via CM/ECF and/or deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **MOTION TO STRIKE PLAINTIFF'S OPPOSITION TO DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT**, postage prepaid (if necessary) to all of the following parties:

Cody B. West
4316 Blushed Meadows Road
North Las Vegas, Nevada 890131

Plaintiff

/s/ Stacy Warner
An employee of AKERMAN SENTERFITT LLP

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